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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN COTTON,

Petitioner,

v.

Case No. 07-10291-BC

Honorable Thomas L. Ludington

KENNETH McKEE,

Respondent.

FILED
AUG 28 2007
CLERK'S OFFICE
DETROIT

NOW COMES Petitioner MARVIN D. COTTON, in propria persona, and respectfully moves this Honorable Court pursuant to Federal Rules of Civil Procedure, Rule 6(b) for an Order enlarging the time for petitioner to file his reply pleadings in opposition to Respondent's pleadings requesting denial of the Petition for Writ of Habeas Corpus, and sayeth in support thereof that:

1. On January 18, 2007, Petitioner Marvin Cotton filed a petition for a writ of habeas copus under 28 U.S.C. § 2254. On January 23, 2007, this Honorable Court Ordered that Respondent file an answer to the petition in accordance with Rule 5, Rules Governing Section 2254 Cases. Further, on January 23, 2007, that same Order stated that Petitioner shall have 45 days from the date of the responsive pleading to submit a reply. On July 19, 2007, Respondent Kenneth McKee filed a response to the petition.

2. On August 13, 2007, Petitioner filed a motion for an extension of time to file a reply. Citing limitation on the ability to reseach and to develop legal

arguments based on limitations consequent to current circumstances in confinement.

3. On August 17, 2007, this Honorable Court GRANTED Petitioner's motion for an extension of time but to the contrary, the date on the Order GRANTING petitioner's motion for an extension of time is reducing the deadline to August 27, 2007. To commence petitioner's original deadline of September 2, 2007, and replace it with August 27, 2007, places petitioner in a greater disadvantage in respect to shorting the deadline.

4. Pursuant to 28 USC B 2248 the Respondent's allegations in his Answer pleadings shall be accepted as true unless the Petitioner file a responsive pleading to the contrary. See 28 USC B 2248.


5. Pursuant to FRCP Rule 6(b) "the court for cause shown may at any time in its discretion grant a party's request for an enlargement of time" if the party who has filed the motion, has done so before the expiration of a period originally prescribed. See Fed. R. Civil Procedural, Rule 6(b).

6. Petitioner asks this Court to issue an Order requiring his reply pleadings be filed with the Court no later than September 27, 2007, which is a date passed the original deadline.

RELIEF REQUESTED

WHEREFORE, for the reasons stated above, Petitioner MARVIN D. COTTON, prays that this Honorable Court grant his request and issue an Order extending the date for filing of his reply pleadings, correcting the date for filing on the August 17, 2007 Order granting petitioner extension of time, or grant any other relief this Court may deem just and equitable under the circumstances of this case.

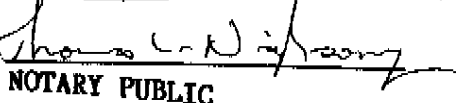
Respectfully Submitted,



Marvin D. Cotton No.348927
Petitioner In Propria Persona
Bellamy Creek Corr. Fac.
1727 West Bluewater Highway
Tonia, Michigan 48846

Dated: August 23, 2007

Subscribed and sworn to before me
this 23 day of August 23, 2007



NOTARY PUBLIC

THOMAS L. NIGHSONGER, Notary Public
State of Michigan
County of Tonia
My Commission Expires May 28, 2011
Acting in the County of Tonia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN D. COTTON,
Petitioner,

V.

CASE NO. 1:07-CV-10291

KENNETH MCKEE,
Respondent.

HONORABLE THOMAS L. LUDINGTON

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
COUNTY OF IONIA) ss.

I, MARVIN D. COTTON No. 348927, hereby certify that on August 23, 2007, I filed the foregoing pages:

PETITIONER'S MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY PLEADINGS

with the Clerk of the Court using the MDOC's Expedited Legal Mail-Prisoner procedure and ask that the clerk notify such filing with the following:

Honorable Thomas L. Ludington
Magistrate Donald A. Scheer

and I hereby further certify that I have mailed a true copy of the same also by MDOC's Expedited Legal Mail-Prisoner procedure by United States Postal Service to Counsel of Record for respondent:

Brad H. Beaver
Assistant Attorney General
Appellate Division
P.O. Box 30217
Lansing, Michigan 48909

PETITIONER IN PRO. PER

8-23-07
Anna Estes

/s/ Marvin D. Cotton
Marvin D. Cotton No. 348927
28 USC B 1746

ANNA ESTES, Notary Public
State of Michigan
County of Ionia
My Commission Expires June 24, 2011
Acting in the County of IONIA

E X H I B I T S

Case 1:07-cv-10291-TLL-DAS Document 6 Filed 01/23/2007 Page 1 of 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN D. COTTON,

CASE NO.1:07-CV-10291

Petitioner,

HONORABLE THOMAS L. LUDINGTON

v.

KENNETH McKEE,

Respondent.

FILED

JAN 23 2007

CLERK'S OFFICE, DETROIT-PSG
U.S. DISTRICT COURT

ORDER REQUIRING RESPONSIVE PLEADING

The petition for a writ of habeas corpus has been examined. It is not subject to summary dismissal under Rule 4, Rules Governing Section 2254 Cases.

IT IS ORDERED that the Clerk of the Court serve a copy of the petition and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by **first class mail** as provided in Rule 4.

IT IS FURTHER ORDERED that Respondent file an answer to the petition in accordance with Rule 5, Rules Governing Section 2254 Cases by **JULY 19, 2007**. Petitioner shall have **45 days** from the date of the responsive pleading to submit a reply.

IT IS FURTHER ORDERED that as part of the answer, Respondent shall file with the Clerk a copy of the relevant transcripts, the relevant appellate briefs submitted by Petitioner and the prosecution, and the state appellate opinions and orders as required by Rule 5. A separate index listing the materials being filed shall also be filed.

s/R. Steven Whalen

R. STEVEN WHALEN

UNITED STATES MAGISTRATE JUDGE

DATED: 1-23-07

CERTIFICATION

I certify that, on the date indicated below, I arranged for service as provided for above, and I mailed a copy of the order to petitioner.

Dated: 

Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN D. COTTON, #348927,

Petitioner,

-VS-

KENNETH MCKEE,

Respondent.

CASE NO. 1:07-CV-10291
HONORABLE THOMAS L. LUDINGTON
UNITED STATES DISTRICT JUDGE
HONORABLE DONLAD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

PETITIONER'S MOTION FOR ENLARGEMENT OF TIME TO FILE REPLY PLEADINGS

NOW COMES Petitioner MARVIN D. COTTON, in propria persona, and respectfully moves this Honorable Court pursuant to Federal Rules of Civil Procedure, Rule 6(b) for an Order enlarging the time for petitioner to file his reply pleadings in opposition to Respondent's pleadings requesting denial of the Petition for Writ of Habeas Corpus, and sayeth in support thereof that:

1. On January 18, 2007 petitioner filed his first and only petition for writ of habeas corpus challenging his state court convictions on constitutional grounds See Petition for Writ of Habeas Corpus at Docket No. 1 Case Number 1:07-CV-10291.

2. The petition filed by Petitioner raises twelve (12) distinctive constitutional claims which the petitioner believes warrants granting the writ in this matter.

3. On July 19, 2007 counsel of record for respondent filed their answer in opposition to the petition for writ of habeas corpus filed by petitioner. In his answer, Respondent's counsel raises a number of defense requesting that this court deny Petitioner's request for the protection of the Great Writ of Habeas Corpus. Specifically, Respondent's counsel argues that " the state court

adjudication of Petitioner's habeas first and fourth claims did not run contrary to, nor did it involve an unreasonable application of, clearly established Supreme Court law, review of his second and third claims is barred by his procedural default of failing to object to alleged errors at trial, review of his fifth, sixth, seventh, and eighth claims is barred by his procedural default of failing to present them to the state courts in his appeal of right, and his ninth through twelfth claims do not state issues cognizable in habeas action." See Respondent's Answer in Opposition at page 2 Docket No. —.

4. Petitioner believes that Respondent's arguments are misplaced and contrary to controlling legal precedents of this Court and the United States Supreme Court and Petitioner wishes to file reply pleadings.

5. Petitioner now seeks an order from this Court enlarging the time he has to file his reply pleadings to Respondent's Answer for the following reason: (1) petitioner is incarcerated in the Michigan Department of Correctional and has no control over the time period and days which he may attend the facility's law library services; (2) at the current time petitioner is only allowed to attend the facility's law library services only three days out of a week for only two hours periods of time to do his legal research; (3) the facility's law library time periods for Level II prisoners runs from 9:00 AM through 11:30 AM and 6:00 PM through 9:00 PM every day of the week; (4) petitioner has a prison job which requires that he be on that prison job five hours out of the day for five days out of the week with only two days off, if not called in for overtime work, thus, petitioner would be deprived of sleep and rendered ineffective to argue his points to the court; and (5) the claims raised by petitioner and the arguments in opposition raised by the respondent are complex and requires indepth legal research.

6. Pursuant to 28 USC § 2248 the Respondent's allegations in his Answer pleadings shall be accepted as true unless the Petitioner filed a responsive pleading to the contrary. See 28 USC § 2248.

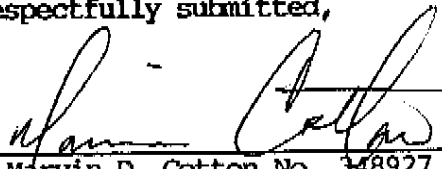
7. Pursuant to FRCP Rule 6(b) "the court for cause shown may at any time in its discretion grant a party's request for an enlargement of time" if the party who has filed the motion, has done so before the expiration of a period originally prescribed. See Fed. R. Civil Procedural, Rule 6(b).


8. Petitioner asks this Court to issue an Order requiring his reply pleadings be filed with the court no later than NOVEMBER 6, 2007.

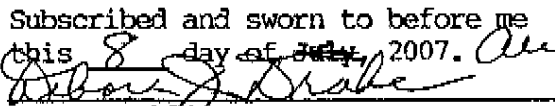
RELIEF REQUESTED

WHEREFORE, for the reasons stated above, Petitioner MARVIN D. COTTON, prays that this Honorable Court grant his request for an enlargement of time and that the due date for filing of his reply pleadings be 120 days from the date of the Court's order granting an enlargement of time, or grant any other relief this court may deem just and equitable under the circumstances of this case.

Respectfully submitted,


Marvin D. Cotton No. 348927
Petitioner In Propria Persona
Bellamy Creek Correctional Facility
1727 West Bluewater Highway
Ionia, Michigan 48846


Dated: August 8, 2007

Subscribed and sworn to before me
this 8 day of ~~July~~ August, 2007.

Notary Public

My Commission Expires:
DEBORA J. DRAKE, Notary Public
Barry County, Michigan
"Acting in Ionia County"
My Commission Expires May 10, 2011

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MARVIN COTTON,

Petitioner,

v.

Case No. 07-10291-BC
Honorable Thomas L. Ludington

KENNETH McKEE,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION FOR AN EXTENSION
OF TIME TO FILE REPLY**

On January 18, 2007, Petitioner Marvin Cotton filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On July 19, 2007, Respondent Kenneth McGee filed a response to his petition.

On August 13, 2007, Petitioner filed a motion for an extension of time to file a reply. He cited limitations on his ability to research and to develop legal arguments based on limitations consequent to his current circumstance in confinement. He requests an extension of time until November 6, 2007.

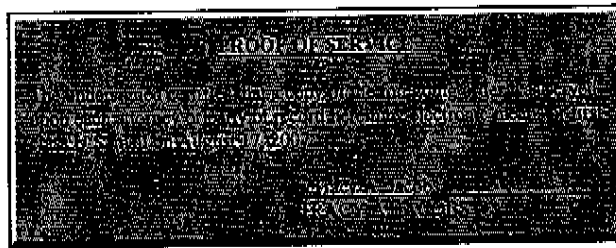
ED Mich. LR 7.1(d)(1)(C) requires filing a reply brief within seven days of service of the response. Although no party has filed a proof of service, Petitioner's present filing demonstrates the effectiveness of the service of Respondent's response. The Court is not persuaded that any extension should be as long as 120 days, as requested by Petitioner. Recognizing that Petitioner does face limitations due to his present confinement, the Court is willing to permit him an extension of time that is twice the time afforded for a reply under the local rule. The Court will commence that

time from the date of Petitioner's filing of the instant motion, rather than from the date of service of Respondent's response on Petitioner.

Accordingly, it is **ORDERED** that Petitioner's motion for an extension of time [dkt #12] is **GRANTED**. Petitioner shall file any reply on or before **August 27, 2007**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 17, 2007



HABEAS

**U.S. District Court
Eastern District of Michigan (Bay City)
CIVIL DOCKET FOR CASE #: 1:07-cv-10291-TLL-DAS**

Cotton v. McKee
Assigned to: Honorable Thomas L. Ludington
Referred to: Honorable Donald A. Scheer
Cause: No cause code entered

Date Filed: 01/18/2007
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Marvin Cotton**

represented by **Marvin Cotton**
348927
Bellamy Creek Correctional Facility
1727 W. Bluewater Highway
Ionia, MI 48846
PRO SE

V.

Respondent**Kenneth McKee**
Warden

represented by **B. Eric Restuccia**
Michigan Department of Attorney
General
P.O. Box 30217
Lansing, MI 48909
517-373-4875
Email: restucciae@michigan.gov
TERMINATED: 07/19/2007
ATTORNEY TO BE NOTICED

Brad H. Beaver
Michigan Department of Attorney
General
120 N. Washington Square, 1st Floor
P.O. Box 30217
Lansing, MI 48909
517-373-4875
Email: beaverb@michigan.gov
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/18/2007	<u>1</u>	PETITION for writ of habeas corpus filed by Marvin Cotton against Kenneth McKee. (Attachments: # 1 Document Continuation)(DPer,)

		(Entered: 01/18/2007)
01/18/2007	<u>2</u>	APPLICATION to proceed in forma pauperis by Marvin Cotton. (DPer,) (Entered: 01/18/2007)
01/18/2007	<u>3</u>	MOTION for appointment of counsel by Marvin Cotton. (DPer,) (Entered: 01/18/2007)
01/18/2007	<u>4</u>	MOTION for evidentiary hearing by Marvin Cotton. (DPer,) (Entered: 01/18/2007)
01/23/2007	<u>5</u>	ORDER granting <u>2</u> Application to proceed in forma pauperis. Signed by Honorable R. Steven Whalen. (DPer,) (Entered: 01/23/2007)
01/23/2007	<u>6</u>	ORDER requiring response to <u>1</u> Petition for writ of habeas corpus. Response due: 7/19/2007. Signed by Honorable R. Steven Whalen. (DPer,) (Entered: 01/23/2007)
02/01/2007	<u>7</u>	FEE received in the amount of \$5.00 for habeas filing fee by Marvin Cotton - Receipt No. 553660. (DPer,) (Entered: 02/01/2007)
02/08/2007	<u>8</u>	ORDER denying without prejudice <u>3</u> Motion to Appoint Counsel, denying without prejudice <u>4</u> Motion for Evidentiary Hearing. Signed by Honorable Thomas L Ludington. (SGam,) (Entered: 02/08/2007)
03/13/2007	<u>9</u>	NOTICE of Appearance by B. Eric Restuccia on behalf of Kenneth McKee. (Restuccia, B.) (Entered: 03/13/2007)
07/19/2007	<u>10</u>	ATTORNEY SUBSTITUTION for Kenneth McKee: Brad H. Beaver added. Attorney B. Eric Restuccia terminated. <i>with Certificate of Service</i> (Beaver, Brad) (Entered: 07/19/2007)
07/19/2007	<u>11</u>	RESPONSE to Petition for Writ of Habeas Corpus <i>with Certificate of Service</i> by Kenneth McKee. (Beaver, Brad) (Entered: 07/19/2007)
08/13/2007	<u>12</u>	MOTION for enlargement of time to file reply pleadings by Marvin Cotton. (DPer) (Entered: 08/15/2007)
08/17/2007	<u>13</u>	ORDER granting <u>12</u> Motion for Extension of Time to File Reply. Replies due by 8/27/2007. Signed by Honorable Thomas L Ludington. (SGam,) (Entered: 08/17/2007)